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U. S. DEPARTMENT OF AGRICULTURE,

INSECTICIDE AND FUNGICIDE BOARD.

SERVICE AND REGULATORY ANNOUNCEMENTS.[1]

APRIL, 1914.

OPINIONS OF GENERAL INTEREST REGARDING QUESTIONS ARISING UNDER THE INSECTICIDE ACT OF 1910.

Below are given extracts from various letters written by the board to individuals. In view of the fact that these opinions of the board may be of service to others, they are published for the benefit of the whole trade. In these letters only those parts have been published which are of importance. It should be understood that the board is not authorized by the provisions of the Insecticide Act of 1910 to criticize, approve, or suggest labels; so that any advice given in these letters is offered in an advisory capacity as representing the opinion of the board in the light of its present knowledge and in the light of the facts presented by the correspondent.

28. General advice relative to labeling.

Gentlemen: We have received your communication of * * * transmitting your catalogue and requesting our advice relative to same.

While we are glad to be of service in an advisory capacity, we have found that we must limit our work along this line to labels. It is absolutely impossible for us with our present force to criticize all the advertising literature of manufacturers.

We are of the opinion that with our criticisms of your labels before you, and the employment of competent scientists to advise you, you will have no trouble in wording your literature so that it will be in conformity with law.

As a matter of general advice, we may say that the following points should receive your most careful consideration:

1. No statements should be made that are false or misleading in any particular.
2. Too comprehensive or too assertive claims should not be made.
3. No claim should be made that a product will be effective against certain insects or fungi, unless you are assured that these claims are true, either on the basis of carefully executed experiments carried out under the directions of your own scientists,

[1] In conformity with Memorandum No. 57 of the Acting Secretary of Agriculture, dated December 26, 1913, prescribing a uniform plan for the publication of information bearing on regulatory matters of the Department of Agriculture, this publication will be issued monthly, or less frequently, as occasion may warrant, by the Insecticide and Fungicide Board. Heretofore, announcement to the public of notices of court judgments and official decisions under the Insecticide Act of 1910, and opinions of the board relating to the application of the law to specific points, have been in the form of single printed sheets, or in the form of letters to individuals. Under the new plan, they will all be published in these service and regulatory announcements of the Insecticide and Fungicide Board.

Free distribution will be limited to firms, establishments, and journals especially concerned. Others desiring copies may obtain them from the Superintendent of Documents, Government Printing Office, Washington, D. C., at 5 cents each or 50 cents a year.

or on the basis of carefully planned and executed experiments published in the most modern literature.

4. Claims should not be made on the basis of old literature, which claims have been disproved by more modern and more carefully executed published experiments.

5. Directions for using certain preparations on certain vegetation should not be made if such applications will lead to serious burning. In this connection the known fact that early applications of Bordeaux to apples will cause serious russeting, that applications of Bordeaux to such tender foliage as peach and Japanese plum will cause serious burning, that applications of Bordeaux to the foliage of certain varieties of cherries will often cause serious burning, and that application of diluted lime-sulphur solution to such tender foliage as peach and Japanese plum will cause serious burning, should be taken into consideration.

Respectfully,

J. K. Haywood,
Chairman, Insecticide and Fungicide Board.

29. Labeling a chicken louse powder composed of naphthalene, sulphur, lime, charcoal, and tobacco.

Gentlemen: We have received your communication of * * * relative to labeling a "Louse Killer" under the provisions of the Insecticide Act of 1910.

* * * If your Louse Killer consists of naphthalene, sulphur, lime, charcoal, and tobacco, we are of the opinion that the naphthalene, sulphur, and nicotine of the tobacco are active, while the lime, the various impurities in same, the charcoal, and the tobacco other than nicotine, as well as any sand, dirt, and inert denaturing substances in the tobacco used, are inert. We therefore suggest the following as the most feasible form of statement on the face of the principal label, which in the case of * * * Louse Killer is the middle panel of the label:

Active ingredients:	Per cent.
Naphthalene	——
Sulphur	——
Nicotine	——
Inert ingredients	——

We can only suggest that it will be necessary for you to have your nicotine determined in the various batches of tobacco which you use in this preparation. If the nicotine varies in different batches, then it will be satisfactory to express your nicotine as "nicotine not less than —— per cent," provided that the nicotine is never less than the percentage given, and that the percentage given approximates the amount actually present in the tobacco and is not an absurd statement of same.

We note that on the so-called * * * Louse Exterminator label the product is designated an "exterminator" and in several places elsewhere on the label it is referred to as an "exterminator." In view of the fact that the extermination of lice and mites can not be promised, the word "exterminator" should be replaced by some less comprehensive word, such as "killer" or "remedy" or "powder."

* * * We note that this label claims: "For disinfecting the hen house and killing out the vermin * * *." From the composition of this product, we are of the opinion that it would not be an effective disinfectant (killer of bacteria), nor would it kill all vermin; hence the above statement should be removed.

We note that you claim "Furs and carpets are never moth eaten where this product has been applied." Whether or not this is true we are unable to say; however, the claim should not be made unless it is in strict accordance with facts.

Hoping the above will be of service, I am,

Respectfully,

J. K. Haywood,
Chairman, Insecticide and Fungicide Board.

30. Labeling a chicken louse powder composed of tobacco stems, sulphur, naphthalene, and plaster of Paris.

GENTLEMEN: We have received your communication of * * * relative to the labeling of your "Lice and Vermin Destroyer."

We regret to inform you that the limit of time for using supplementary sticker labels to give the information required by law expired January 1, 1912. At the present time it is necessary for this information to be plainly printed or stamped on the face of the principal label. * * *

Relative to the active and inert ingredients of a lice destroyer composed of tobacco stems, sulphur, naphthalene, and plaster of Paris, we are of the opinion that the nicotine of the tobacco stems, the sulphur, and the naphthalene are active, while the tobacco stems other than nicotine, the sand and dirt, and any inert denaturing substances in the tobacco stems and the plaster of Paris are inert. We therefore suggest the following as the most feasible form of statement on the face of the principal label:

Active ingredients:	Per cent.
Nicotine	——
Sulphur	——
Naphthalene	——
Inert ingredients	——

On the first and third panels of your label and in several other places on the label we note that the product is referred to as a vermin destroyer. In view of the fact that the product will not be of service against all vermin, we are of the opinion that this designation should be removed. On the first panel of the label appears the statement, "Kills insects on poultry, stock, plants, etc." In view of the fact that the product will not kill all insects, the word "insects" should be modified by some such word as "some," "certain," or "many," or the specific insects against which the product will be effective should be enumerated.

On the second panel of the label, under directions, we note the statement, "A handful of powder scattered about the nest box will keep the * * * fowl free from lice." We are of the opinion that this treatment would probably not be effective in freeing fowls of lice.

On the third panel of the label, in addition to the use of the words "Vermin Destroyer" already called to your attention, we note the statements: "It is also of value for insects on plants and vegetables. * * * If you want to destroy * * * all kinds of vermin on poultry and in the poultry house, use * * *." In view of the fact that the product will not be of service against all insects on plants and vegetables and will not destroy all kinds of vermin on poultry and in the poultry house, we suggest that the word "insects" be modified by some such word as "some," "certain," or "many," and that the phrase "all kinds of vermin" be similarly changed. * * *

Respectfully,

J. K. HAYWOOD,
Chairman, Insecticide and Fungicide Board.

31. Labeling a liquid disinfectant and insecticide composed of kerosene, carbolic acid, oil of myrbane, and naphthalene.

GENTLEMEN: We have received your communication of * * * relative to labeling your "Disinfectant and Insect Killer" under the provisions of the Insecticide Act of 1910.

* * * In a product which is to be used against bed bugs, chicken lice, * * * we are of the opinion that the kerosene of your mixture, the carbolic acid, the oil of myrbane, and the naphthalene are all probably active, hence no statement is required relative to active and inert ingredients if the above ingredients are pure. If, however,

any of the ingredients, such as the carbolic acid, contains water, then the water is inert, and the amount of same in the finished product should be stated on the face of the principal label, as "Water, Inert Ingredient, —— per cent."

We note that this product is designated a disinfectant, and several statements relative to disinfectant qualities are made on the label. From the composition of the article and the very small quantity of carbolic acid present, we are very doubtful as to whether this preparation would act as an effective disinfectant, i. e., killer of bacteria. We suggest, therefore, that you satisfy yourself that this product is an effective disinfectant by having it tested by a competent bacteriologist before making the claims relative to disinfectant qualities.

In addition to the above, on the left-hand panel of your label appears the statement, "Kills * * * moths * * * and ticks on cattle, etc." We are of the opinion that the product would not kill all moths, would not be effective against ticks on cattle, and that the abbreviation "etc." is too comprehensive. We suggest, therefore, that the statement be limited to "clothes moths," in case this is the moth against which it will be effective, that the statement relative to ticks on cattle be removed, and that the abbreviation "etc." be removed. We also note on this panel of the label the statement, "Kills all kinds of vermin on trees," and are of the opinion that this is not true.

On the second panel of the label we note the statement, "It will kill anything in the insect family instantly," and are of the opinion that this should be removed. A false statement on the label is not justified, even though it be given as the opinion of an expert.

* * * On the same panel, under "Animals," we note the statement, "Kills everything in insect life," and are of the opinion that this should be removed. Again, under "Disinfectant," we note, " * * * Disinfectant has no superior as a disinfectant" and "* * * all insect life will be exterminated, bad odors expelled, and wholesome and pure air prevail. Its effects are instantaneous in every case." As we have said before, we doubt whether the product is an effective disinfectant. Even if it is an effective disinfectant, it is not superior to all others, will not exterminate all insect life, will not expel all bad odors, but will simply mask some bad odors, and will not act instantaneously. Neither can it be promised that the product will produce wholesome and pure air.

Whether or not the statement on the right-hand panel of your label that the product is used in nearly all the large public institutions and hospitals throughout the Middle West is in accordance with facts we are unable to say. We note on this panel the statement, "Every doctor will recommend it whenever there are any contagious diseases," and "* * * kills all germs and bugs." We are of the opinion that the first statement is not true, that the product will probably not kill all germs, and that the product will certainly not kill all bugs.

Hoping the above will be of service, I am,

Respectfully,

J. K. Haywood,
Chairman, Insecticide and Fungicide Board.

32. Labeling a roach powder composed of borax, French ocher, and sugar.

Gentlemen: * * * We are not familiar with the term "French ocher;" however, if this is similar to the usual ocher of commerce (a native ferruginous clay), then in a roach powder containing borax, French ocher, and sugar we are of the

opinion that the borax is active, while the French ocher and sugar are inert. We therefore suggest either of the following forms of statement on the face of the principal label:

Active ingredients:	Per cent.
Borax	——
Inert ingredients	——

or

Inert ingredients:	
French ocher	——
Sugar	——

* * * * * * *

If your product consists principally of borax, then we are of the opinion that the words "Harmless to pet animals" should be removed from the label, since borax in sufficient quantities would be harmful to pet animals.

Respectfully,

J. K. Haywood,
Chairman, Insecticide and Fungicide Board.

NOTICES OF JUDGMENT UNDER THE INSECTICIDE ACT OF 1910.

[Given pursuant to section 4 of the Insecticide Act of 1910.]

89. Misbranding of "Lime-Sulphur Solution." U. S. v. Peaslee-Gaulbert Co. Plea of guilty. Fine, $25 and costs. (I. & F. No. 172. Dom. No. 6955.)

On September 2, 1913, the United States attorney for the Western District of Kentucky, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Peaslee-Gaulbert Co., Louisville, Ky., a corporation, alleging the shipment and delivery for shipment, on May 18, 1912, from Louisville, in the State of Kentucky, to New Albany, in the State of Indiana, of a quantity of a certain article contained in two cans, each labeled "Lime Sulphur Solution," which was misbranded within the meaning of the Insecticide Act of 1910.

Analysis of a specimen of the article in the United States Department of Agriculture showed that it consisted partially of inert substances, namely, water (65.94 per cent) and calcium sulphate (0.13 per cent), which do not prevent, destroy, repel, or mitigate insects or fungi. Misbranding of the article was alleged in the information in that it was an insecticide other than Paris green or lead arsenate, and consisted partially of inert substances, to wit, water and calcium sulphate, which inert substances do not prevent, destroy, repel, or mitigate insects or fungi, and that neither of the cans bore any label having the names and percentage amounts of each or any of said inert ingredients plainly and correctly stated on such label or said cans, and neither of said cans bore any label or statement plainly, or at all, stating the correct names and percentage amounts of each and every ingredient of the insecticide having insecticidal or fungicidal properties and the total percentage of said inert ingredients.

The cause coming on for trial on October 18, 1913, and a jury having been waived, the cause was tried and determined by the court as to issues of fact as well as issues of law, upon a stipulation of facts as follows: That the defendant did not manufacture lime-sulphur solution, but was a jobber or dealer therein; that the lime-sulphur solution referred to in the information was a portion of a shipment previously received in barrels by the defendant from the Kibler-Lieber Co., Indianapolis, Ind.; that the cans referred to in the information were filled with the lime-sulphur solution from one of a number of barrels of the product received from the Kibler-Lieber Co., Indianapolis, Ind., by an employee of the defendant, who then attached to each of the cans labels bearing only the words "Lime Sulphur Solution," and delivered the cans so labeled for transportation to the consignee in New Albany, Ind., to a transfer company, a common carrier engaged in transporting property between Kentucky and Indiana; that the defendant knew of the existence of the Insecticide Act of 1910, but was not aware that the act applied to a shipment by it as a jobber of the lime-sulphur solution purchased by it from the manufacturers thereof and properly labeled by such manufacturers on the original packages; that the chemist's analysis of the product filed with the information was correct, but the 0.13 per cent of calcium sulphate was a negligible impurity in the lime and sulphur forming parts of the lime-sulphur solution; and that the lime-sulphur solution contained in the cans contained the usual ingredients of lime-sulphur solution sold throughout the country and in the usual proportions.

The court found the defendant, the Peaslee-Gaulbert Co., guilty and imposed a fine of $25 and costs.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

90. Misbranding of "The Pioneer Quick Fly Exterminator." U. S. v. J. L. Hazen and William Feldman. Plea of guilty. Defendants discharged. (I. & F. No. 121. Dom. No. 6968.)

On May 31, 1913, the United States attorney for the District of Colorado, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against J. L. Hazen and William Feldman, copartners, doing business under the firm name of The Pioneer Quick Fly Exterminator Co., Denver, Colo., alleging the shipment and delivery for shipment on May 4, 1912, from Denver, in the State of Colorado, to Cincinnati, in the State of Ohio, of a quantity of an article called "The Pioneer Quick Fly Exterminator," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in packages labeled in part as follows: "The Pioneer Quick Fly Exterminator. * * * Poison. * * * Note: While this Exterminator is slightly poisonous, it is harmless for external use. * * * The Pioneer Quick Fly Exterminator Co. C. W. Davis, General Sales Agent, Continental Building, Denver, Colo."

Analysis of a specimen of the article in the United States Department of Agriculture showed that it was extremely poisonous and harmful for external use; that it contained arsenic in water-soluble forms; and that it consisted partially of inert substances, namely, water, molasses, and ginger, which do not prevent, destroy, repel, or mitigate insects. Misbranding of the article was alleged in the information in the following particulars: (1) In that it was an insecticide and that the labels on the packages were false and misleading and were so worded as to deceive and mislead the purchaser in this, that the labels bore the statement, "While this Exterminator is slightly poisonous, it is harmless for external use," whereas, in truth and in fact, the contents of the packages were extremely poisonous and were extremely harmful for external use; (2) in that it was an insecticide and that it contained arsenic in one of its combinations, and the total amount of arsenic present (expressed as per centum of metallic arsenic) was not stated on the labels of the packages; (3) in that it was an insecticide and that it contained arsenic in one of its combinations, and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) was not stated on the labels of the packages; and (4) in that it was an insecticide and that it consisted partially of inert substances, to wit, water, molasses, and ginger, which do not prevent, destroy, repel, or mitigate insects, and the names and the percentage amounts of each and every one of such inert ingredients were not stated on the labels on the packages.

The cause coming on for trial on November 7, 1913, the defendants, J. L. Hazen and William Feldman, entered a plea of guilty, the court ordered the information read to the defendants, and after hearing their statements they were discharged.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

Note.—As respects inert ingredients, the Insecticide Act of 1910 requires that there must appear on the label either the name and the percentage amount of each inert ingredient or the name and the percentage amount of each active ingredient, together with the total percentage amount of inert ingredients.

91. Adulteration and misbranding of "Thompson's Rose Nicotine." U. S. v. F. A. Thompson & Co. Plea of nolo contendere. Fine, $50. (I. & F. No 103. Dom. No. 6867.)

On April 21, 1913, the United States attorney for the Eastern District of Michigan, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against F. A. Thompson & Co., Detroit, Mich., a corporation, alleging the shipment and delivery for shipment, on June 18, 1912, from Detroit, in the State of Michigan, to San Francisco, in the State of California, of a quantity of an article called "Thompson's Rose Nicotine" which was adulterated and misbranded within the meaning of the Insecticide Act of 1910. The article was contained in 27 dozen packages, each labeled and branded in part as follows: "Thompson's Rose Nicotine. Contains active ingredients, 10% nicotine (free) and 90%

inactive ingredients. * * * Guaranteed by F. A. Thompson & Co. under Insecticide Act 1910. No. 65. Poison. * * * F. A. Thompson & Co., Mfg. Chemists, Detroit, Mich."

Analysis of a specimen of the article in the United States Department of Agriculture showed that it contained nicotine in an amount less than 10 per cent, namely, 8.47 per cent. Adulteration of the article was alleged in the information in that it was an insecticide, and that its strength and purity fell below the professed standard and quality under which it was sold, to wit, 10 per cent nicotine, whereas, in truth and in fact, it consisted of less than 10 per cent nicotine. Misbranding of the article was alleged in that it was an insecticide, and that the statement on the label, to wit, "Contains active ingredients, 10% nicotine (free)," was false and misleading in that it conveyed the impression that the insecticide contained 10 per cent nicotine, whereas, in truth and in fact, the insecticide contained a less amount than 10 per cent nicotine, to wit, 8.47 per cent.

The cause coming on for trial on January 12, 1914, the defendant, F. A. Thompson & Co., withdrew a plea of not guilty, previously entered, and entered a plea of nolo contendere, whereupon the court imposed a fine of $50.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

92. Adulteration and misbranding of "To-Bak-Ine Liquid." U. S. v. F. A. Thompson & Co. Plea of nolo contendere. Fine, $50. (I. & F. No. 114. Dom. No. 6967.)

On August 5, 1913, the United States attorney for the Eastern District of Michigan, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against F. A. Thompson & Co., Detroit, Mich., a corporation, alleging the shipment and delivery for shipment, on May 17, 1912, from Detroit, in the State of Michigan, to Cincinnati, in the State of Ohio, of a quantity of an article called "To-Bak-Ine Liquid," which was adulterated and misbranded within the meaning of the Insecticide Act of 1910. The article was contained in cans labeled and branded in part as follows: "One Pint To-Bak-Ine Liquid 'Poison' A concentrated nicotin solution. To-Bak-Ine Liquid contains active ingredients, 45% nicotine (free) and 55% inert ingredients. Guaranteed by F. A. Thompson & Co., under the Insecticide Act of 1910. No. 65. Detroit Nicotine Co., Distributors of To-Bak-Ine Products. * * *"

Analysis and examination of specimens of the article in the United States Department of Agriculture showed that it contained nicotine in an amount less than 45 per cent, and that the contents of the packages were less than 1 pint of the article. Adulteration of the article was alleged in the information in that it was an insecticide, and that its strength fell below the professed standard under which it was sold, to wit, 45 per cent nicotine. Misbranding of the article was alleged in the following particulars: (1) In that it was an insecticide, and that the statement, to wit, "One Pint," borne on the labels on the cans, was false and misleading, in that it conveyed the impression that the cans contained 1 pint of the insecticide, and that the insecticide was labeled and branded so as to deceive and mislead the purchaser thereof in the respect that it was labeled and branded "One Pint," whereas, in truth and in fact, the cans were short in measure; (2) in that it was an insecticide, and that the statement, to wit, "To-Bak-Ine Liquid contains active ingredients 45% nicotine," borne on the labels on the cans, was false and misleading in that it conveyed the impression that the insecticide contained 45 per cent nicotine, and that the insecticide was labeled and branded so as to deceive and mislead the purchaser thereof by reason of the false and misleading claim on the labels that the insecticide contained 45 per cent nicotine, whereas, in truth and in fact, the insecticide contained nicotine in an amount less than 45 per cent; and (3) in that it was an insecticide and that it was in package form

and the contents of the packages were stated in terms of measure, but they were not correctly stated on the outside of the package.

The cause coming on for trial on January 13, 1914, the defendant, F. A. Thompson & Co., withdrew a plea of not guilty, previously entered, and entered a plea of nolo contendere, whereupon the court imposed a fine of $50.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

93. Misbranding of "To-Bak-Ine Sheep Dip." U. S. v. F. A. Thompson & Co. Plea of nolo contendere. Fine, $50. (I. & F. No. 117. Dom. No. 7013.)

On August 6, 1913, the United States attorney for the Eastern District of Michigan, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against F. A. Thompson & Co., Detroit, Mich., a corporation, alleging the shipment and delivery for shipment, on April 11, 1912, from Detroit, in the State of Michigan, to Salt Lake City, in the State of Utah, of a quantity of an article called "To-Bak-Ine Sheep Dip" which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in cans labeled and branded in part as follows: "One Pound To-Bak-Ine Sheep Dip Contains Active Ingredients, 40% Nicotine (free) and 60% Inactive Ingredients. Notice: A sample of this product has been submitted to the Department of Agriculture for examination. We guarantee the contents of this package to be of the same composition and strength as the sample submitted to the Department and that when diluted according to the directions printed hereon for the treatment of sheep and cattle scab it will give a dipping fluid of the composition required of a 'Tobacco and Sulphur and Tobacco Dip without Sulphur' dip by the regulations of the Secretary of Agriculture governing sheep and cattle scab. Guaranteed by F. A. Thompson & Co., under the Insecticide Act of 1910. No. 65, Detroit Nicotine Co. Distributors of Nicotine Products, Detroit, Mich. Directions for Using. * * *"

Analysis of a specimen of the article in the United States Department of Agriculture showed that it contained nicotine in an amount less than 40 per cent, and that diluting the article according to the directions on the label for the treatment of sheep and cattle scab would not give a dipping fluid of the composition required of a tobacco and sulphur dip and tobacco dip without sulphur, by the regulations of the Secretary of Agriculture governing sheep and cattle scab. Misbranding of the article was alleged in the information in that it was an insecticide, and that the statements borne on the labels on the cans, to the effect that the insecticide contained 40 per cent nicotine, and to the effect that the insecticide, when diluted according to the directions printed on the label for the treatment of sheep and cattle scab, would give a dipping fluid of the composition required of a tobacco and sulphur dip and tobacco dip without sulphur by the regulations of the Secretary of Agriculture governing sheep and cattle scab, were false and misleading and that the insecticide was labeled and branded so as to deceive and mislead the purchaser thereof, in this, that the insecticide in fact and in truth contained nicotine in an amount less than 40 per cent, and the insecticide when diluted according to the said directions on the label would give a dipping fluid less in strength than, and inferior in quality to, the composition required of a tobacco and sulphur dip and a tobacco dip without sulphur by the regulations of the Secretary of Agriculture governing sheep and cattle scab.

The cause coming on for trial on January 13, 1914, the defendant, F. A. Thompson & Co., withdrew a plea of guilty, previously entered, and entered a plea of nolo contendere, and the court imposed a fine of $50.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

94. Misbranding of "Chloro-Naptholeum Disinfectant." U. S. v. West Disinfecting Co. Plea of nolo contendere. Fine, $25 and costs. (I. & F. No. 73. Dom. No. 5858.)

On December 26, 1913, the United States attorney for the Northern District of Georgia, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district, and on January 14, 1914, an amended information, against the West Disinfecting Co., New York, N. Y., a corporation, alleging the shipment and delivery for shipment, on June 8, 1911, from Atlanta, in the State of Georgia, to Nashville, in the State of Tennessee, of a quantity of an article called "Chloro-Naptholeum Disinfectant" which was misbranded within the meaning of the Insecticide Act of 1910. The article was labeled in part as follows: "Chloro-Naptholeum Disinfectant. Guaranteed to be 5 to 6 times stronger bacteriologically than carbolic acid crystals when tested against a vigorous culture of B. Typhosus. Non-Poisonous and Harmless. * * * Guaranteed by the West Disinfecting Co. under the Insecticide Act of 1910. Serial No. 156. * * * Hospital Use and Sick Room. * * * spray rooms daily to oxygenate the air of room and freshen atmosphere. * * * Railroads. * * * When sprayed in cars it oxygenates the air and destroys all odors * * *."

Analysis of a specimen of the article in the United States Department of Agriculture showed that it was poisonous, that when sprayed in rooms or cars it would not oxygenate the air, and that it consisted partially of an inert substance, namely, water, which does not prevent, destroy, repel, or mitigate insects or fungi. Misbranding of the article was alleged in the information in that it was an insecticide, and (1) that the statements on the label to the effect that the insecticide was nonpoisonous and harmless, and to the effect that when sprayed in rooms and cars it would oxygenate the air, were false and misleading, because, as a matter of fact, the article was poisonous, and spraying rooms or cars therewith would not oxygenate the air; (2) in that it was labeled and branded so as to deceive and mislead the purchaser, the label bearing statements to the effect that the insecticide was nonpoisonous and harmless, and to the effect that when sprayed in rooms or cars it would oxygenate the air, whereas, as a matter of fact, the insecticide was poisonous, and spraying rooms or cars therewith would not oxygenate the air; and (3) in that it consisted partially of an inert substance, to wit, water, which does not prevent, destroy, repel, or mitigate insects or fungi, and neither the name and percentage amount of the inert ingredient nor the names and percentage amounts of each and every ingredient having insecticidal or fungicidal properties and the total percentage of inert ingredients were stated on the label.

The cause coming on for trial on January 14, 1914, the defendant, West Disinfecting Co., entered a plea of nolo contendere, and the court imposed a fine of $25 and costs.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

95. Misbranding of "Perfection Carman's Antipest." U. S. v. Perfection Chemical Co. Plea of guilty. Fine, $10. (I. & F. No. 171. Dom. No. 6762.)

On February 10, 1914, the United States attorney for the Eastern District of New York, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Perfection Chemical Co., New York, N. Y., a corporation, alleging the shipment and delivery for shipment, on September 7, 1911, from the State of New York into the District of Columbia, of a quantity of an article known as "Perfection Carman's Antipest" which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in a cask labeled as follows: "From Perfection Chemical Co. Manufacturers of Formaldehyde Specialties, Flushing, N. Y., U. S. A. Disinfectants, Insecticides, Vermin Exterminators."

Analysis of a specimen of the article in the United States Department of Agriculture showed that it consisted partially of an inert substance, namely, water, which does not prevent, destroy, repel, or mitigate insects. Misbranding of the article was alleged in the information in that it was an insecticide, and that it consisted partially of an inert substance, to wit, water, which does not prevent, destroy, repel, or mitigate insects, and the name and percentage amount of the said inert ingredient were not stated on the label of the insecticide, nor, in lieu of the name and the percentage amount of the said inert ingredient, the names and percentage amounts of each and every ingredient of the insecticide having insecticidal properties and the total percentage of the said inert ingredient present were not stated on the label of the insecticide.

The cause coming on for trial on February 16, 1914, the defendant, Perfection Chemical Co., entered a plea of guilty, and the court imposed a fine of $10.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

96. Misbranding of "Moore's Hog Remedy." U. S. v. Robert W. Prescott. Plea of guilty. Fine, $10 and costs. (I. & F. No. 168. Dom. No. 7042.)

On December 6, 1913, the United States attorney for the Western District of Missouri, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against Robert W. Prescott, Kansas City, Mo., alleging the shipment, on February 23, 1912, from Kansas City, in the State of Missouri, to Wichita, in the State of Kansas, of a quantity of an article known as "Moore's Hog Remedy" which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in 72 cans labeled as follows: "Moore's Hog Remedy. The Original Hog Dip and Feed. Prevents and Cures Diseases of Swine. Manufactured only by Robert W. Prescott, Successor to Moore Chemical & Mfg. Co. Kansas City, Mo., U. S. A."

Analysis and examination of a specimen of the article in the United States Department of Agriculture showed that it would not prevent and cure all diseases of swine, and that it consisted partially of an inert substance, namely, water, which does not prevent, destroy, repel, or mitigate insects or fungi. Misbranding of the article was alleged in the information in that it was an insecticide, and that the cans were labeled and branded so as to deceive and mislead the purchaser, (1) in this, that the labels on the cans containing the insecticide bore the statement, "Moore's Hog Remedy. Prevents and Cures Diseases of Swine," whereas, in truth and in fact, the said insecticide would not prevent and cure all diseases of swine, and (2) in this, that the labels on the cans containing the insecticide bore the statement, "Manufactured only by Robert W. Prescott, Successor to Moore Chemical & Mfg. Co. Kansas City, Mo., U. S. A.," whereas, in truth and in fact, the said insecticide was not manufactured by Robert W. Prescott. Misbranding of the article was alleged, further, in that it was an insecticide other than Paris green and lead arsenate, and that it consisted partially of an inert substance, to wit, water, which does not prevent, destroy, repel, or mitigate insects or fungi, and the name and the percentage amount of the said inert ingredient were not stated on the labels on the cans containing the insecticide, nor, in lieu of the name and the percentage amount of the said inert ingredient, the labels on the packages containing the insecticide did not bear plainly stated thereon the correct names and percentage amounts of each and every ingredient of the insecticide having insecticidal properties, and the total percentage of the said inert ingredient of the insecticide.

The cause coming on for trial on March 4, 1914, the defendant, Robert W. Prescott, entered a plea of guilty and the court imposed a fine of $10 and costs.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

97. Misbranding of "Car-Sul." U. S. v. Robert W. Prescott. Plea of guilty. Fine, $10 and costs. (I. & F. No. 184. Dom. No. 7038.)

On February 10, 1914, the United States attorney for the Western District of Missouri, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against Robert W. Prescott, Kansas City, Mo., alleging the shipment, on June 11, 1912, from Kansas City, in the State of Missouri, to Wichita, in the State of Kansas, of a quantity of an article known as "Car-Sul" which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in 24 cans labeled as follows: "Car-Sul. Non-Irritating, Effective, Antiseptic, Non-Poisonous. Disinfectant, Deodorant, Germicide, Purifier and Cleanser. Cures Mange, Itch, Wire Cuts, Galls, Burns, and all wounds. Kills Lice, Mites, Prevents and Cures Poultry Diseases. Kills Screw Worms and Heals the Wound. Manufactured only by the Moore Chem. & Mfg. Co. Dr. J. H. Whittier, Pres. Kansas City, Mo., U. S. A. To Cure Mange or Itch on Any Animal. * * * To Cure Roup. * * *"

Analysis and examination of a specimen of the article in the United States Department of Agriculture showed that it was irritating and poisonous; that it consisted partially of an inert substance, namely, water, which does not prevent, destroy, repel, or mitigate insects or fungi; and that it would not cure certain forms of mange and certain cases of roup. Misbranding of the article was alleged in the information in that it was an insecticide and fungicide, and the labels on the cans containing the insecticide and fungicide bore statements regarding the insecticide and fungicide which were false and misleading and so as to deceive and mislead the purchaser: (1) In this, that the labels on the cans bore the words, "Non-Irritating" and "Non-Poisonous," whereas the insecticide and fungicide, in truth and in fact, was irritating and was poisonous; (2) in this, that the labels on the cans containing the insecticide and fungicide bore the words and statements, "Cures Mange," and "To Cure Mange * * * on Any Animal," said words and statements conveying the impression that the insecticide and fungicide would cure mange on any animal, whereas the insecticide and fungicide, in truth and in fact, would not cure certain forms of mange; and (3) in this, that the labels on the cans containing the insecticide and fungicide bore the words and statement, "To Cure Roup," said words and statement conveying the meaning that the insecticide and fungicide would cure roup, whereas the insecticide and fungicide, in truth and in fact, would not cure certain cases of roup. Misbranding of the article was alleged, further, in that it was an insecticide and fungicide other than Paris greens and lead arsenates, and that it consisted partially of an inert substance, to wit, water, which does not prevent, destroy, repel, or mitigate insects or fungi, and the name and the percentage amount of the said inert ingredient were not stated on the labels on the cans containing the insecticide and fungicide, nor in lieu of the name and the percentage amount of the said inert ingredient were the names and the percentage amounts of each and every ingredient of the insecticide and fungicide having insecticidal or fungicidal properties and the total percentage of the said inert ingredient stated on the labels on the cans containing the insecticide and fungicide.

The cause coming on for trial on March 4, 1914, the defendant, Robert W. Prescott, entered a plea of guilty, and the court imposed a fine of $10 and costs.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

98. Adulteration and misbranding of "Magic Fly Killer Plant." U. S. v. Henry Heininger and Charles L. Baker. Plea of guilty. Sentence suspended. (I. & F. No. 188. Dom. No. 6985.)

On March 4, 1914, the United States attorney for the Southern District of New York, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against Henry Heininger and

Charles L. Baker, copartners, trading under the firm name and style of The Henry Heininger Co., New York, N. Y., alleging the shipment and delivery for shipment, on June 7, 1912, from New York, in the State of New York, to Washington, in the District of Columbia, of a quantity of an article known as "Magic Fly Killer Plant," which was adulterated and misbranded within the meaning of the Insecticide Act of 1910 The article was labeled as follows: "Magic Fly Killer Plant. * * * Total metallic arsenic 29.90, water-soluble arsenic .0805, inert ingredients 70.10."

Analysis of a specimen of the article in the United States Department of Agriculture showed that it contained metallic arsenic in an amount much less than 29.90 per cent, arsenic in water-soluble forms in an amount much greater than 0.0805 per cent, and inert substances, which do not prevent, destroy, repel, or mitigate insects, in an amount much greater than 70.10 per cent. Adulteration of the article was alleged in the information in that it was an insecticide other than Paris green and lead arsenate, and its strength and purity fell below the professed standard and quality under which it was sold, in this, that the label on the insecticide bore the statement, "Total metallic arsenic 29.90," and "inert ingredients 70.10," whereas, in truth and in fact, the said insecticide contained metallic arsenic in an amount much less than 29.90 per cent, said metallic arsenic being a substance having insecticidal properties, and whereas, in truth and in fact, the said insecticide contained inert substances, which do not prevent, destroy, repel, or mitigate insects, in an amount much greater than 70.10 per cent. Misbranding of the article was alleged: (1) In that it was an insecticide the label of which bore statements regarding the article and the ingredients and substances contained therein which were false and misleading, and which was labeled and branded so as to deceive and mislead the purchaser, in that the label on the insecticide bore the statement, "Total metallic arsenic 29.90, water soluble arsenic 0.0805, inert ingredients 70.10," whereas, in truth and in fact, the insecticide contained metallic arsenic in an amount much less than 29.90 per cent, contained arsenic in water-soluble forms much greater than 0.0805 per cent, and contained inert ingredients in an amount much greater than 70.10 per cent; (2) in that it was an insecticide other than Paris green and lead arsenate, which contained arsenic, and the total amount of arsenic present (expressed as per centum of metallic arsenic) was not correctly stated on the label, in that the label on the insecticide bore the statement, "Total metallic arsenic 29.90," whereas, in truth and in fact, the insecticide contained metallic arsenic in an amount less than 29.90 per cent; (3) in that it was an insecticide other than Paris green and lead arsenate, which contains arsenic in water-soluble forms, and the total amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) was not correctly stated on the label, in that the label on the insecticide bore the statement, "water-soluble arsenic 0.0805," whereas, in truth and in fact, the insecticide contained arsenic in water-soluble forms in an amount much greater than 0.0805 per cent; and (4) in that it was an insecticide other than Paris green and lead arsenate, which consisted partially of inert substances which do not prevent, destroy, repel, or mitigate insects, and which did not have the names and percentage amounts of each and every one of such inert ingredients stated on the label, nor in lieu of the names and the percentage amounts of each and every inert ingredient, the correct names and percentage amounts of each and every ingredient of the insecticide having insecticidal properties and the total percentage of inert ingredients present were not stated plainly on the label, in that the label on the insecticide bore the statement, "Total metallic arsenic 29.90, water soluble arsenic 0.0805, inert ingredients 70.10," whereas, in truth and in fact, the insecticide contained metallic arsenic in an amount much less than 29.90 per cent, said metallic arsenic being a substance having insecticidal properties; whereas, in truth and in fact, the insecticide contained arsenic in water-soluble forms in an amount much greater than 0.0805 per cent; and whereas, in truth and in fact, the insecticide contained inert substances which do not prevent, destroy,

repel, or mitigate insects, in an amount much greater than 70.10 per cent; and the said statements so borne on the label on the insecticide were not in type sufficiently large and plain, nor in a position on the label sufficiently prominent, to attract attention.

The cause coming on for trial on March 9, 1914, the defendants, Henry Heininger and Charles L. Baker, entered a plea of guilty, and the court suspended sentence.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

99. Misbranding of "Magnet Brand Poison Fly Paper." U. S. v. L. W. Young. Plea of guilty. Fine, $10 and costs. (I. & F. No. 220. Dom. No. 7059.)

On March 14, 1914, the United States attorney for the Northern District of Ohio, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against L. W. Young, trading and doing business under the name of the American Fly Paper Co., Massillon, Ohio, alleging the shipment and delivery for shipment, on August 3, 1912, from Massillon, in the State of Ohio, to Chicago, in the State of Illinois, of a quantity of an article known as "Magnet Brand Poison Fly Paper," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in 1,000 envelopes labeled and branded as follows: "Magnet Brand (Design of magnet attracting flies) Poison Fly Paper Keep It Away From Children. Directions * * * American Fly Paper Co., Manufacturers, Massillon, Ohio."

Analysis of a specimen of the article in the United States Department of Agriculture showed that it contained arsenic in a combination thereof and in water-soluble form, and that it consisted partially of inert substances, namely, substances other than a soluble arsenic compound, which do not prevent, destroy, repel, or mitigate insects. Misbranding of the article was alleged in the information in that it was an insecticide other than Paris green and lead arsenate, (1) and that it contained arsenic in a combination thereof, and the total amount of arsenic present in the insecticide was not stated, expressed as per centum of metallic arsenic, or at all, on the labels of the insecticide; (2) and that it contained arsenic in a combination thereof and in water-soluble form and the amount of arsenic in water-soluble form present in the insecticide was not stated, expressed as per centum of metallic arsenic, or at all, on the label of the insecticide; (3) and that it consisted partially of inert substances, which do not prevent, destroy, repel, or mitigate insects, to wit, substances other than a soluble arsenic compound, and the names and the percentage amounts of each and every one of the said inert ingredients were not stated plainly and correctly, or at all, on the labels of the insecticide, nor, in lieu of the names and the percentage amounts of the said inert ingredients, were the names and the percentage amounts of each and every ingredient of the insecticide having insecticidal properties and the total percentage of the inert ingredients stated plainly and correctly, or at all, on the labels of the insecticide.

The cause coming on for trial on March 17, 1914, the defendant, L. W. Young, entered a plea of guilty, and the court imposed a fine of $10 and costs.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

100. Adulteration and misbranding of "Good's Caustic Potash Tobacco Fish Oil Soap No. 6." U. S. v. Roberta K. Good. Plea of guilty. Fine, $100. (I. & F. No. 200. Dom. No. 7273.)

On January 26, 1914, the United States attorney for the Eastern District of Pennsylvania, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against Roberta K. Good, Philadelphia, Pa., alleging the shipment and delivery for shipment, on June 24, 1912,

from Philadelphia, in the State of Pennsylvania, to Buffalo, in the State of New York, of a quantity of an article called "Good's Caustic Potash Tobacco Fish Oil Soap No. 6" which was adulterated and misbranded within the meaning of the Insecticide Act of 1910. The article was contained in cans, each labeled and branded as follows: "Good's Caustic Potash Tobacco Fish Oil Soap No. 6 is recommended to Nurserymen, Florists, Gardeners and Others for the destruction of insects and parasites of all kinds, that infest Plants of any kind. * * * Guaranteed Analysis: Fish Oil, 50 per ct.; Actual Potash, 8 to 9 per ct.; Tobacco Extract 3 per ct. James Good, Philadelphia, Pa., U. S. A. Guaranteed by James Good under the Insecticide Act of 1910. Serial No. 47. Directions. * * * This soap contains no poisons, it has a large percentage of bone phosphate, potash and ammonia. * * *"

Analysis of a specimen of the article in the United States Department of Agriculture showed that it did not contain any tobacco or tobacco extract, that it contained fish oil in a proportion much less than 50 per cent, that it did not contain a large percentage of bone phosphate and ammonia, and that it consisted partially of an inert substance, namely, water, which does not prevent, destroy, repel, or mitigate insects. Adulteration of the article was alleged in the information in that it was an insecticide other than Paris green and lead arsenate, and its strength and purity fell below the professed standard or quality under which it was sold, in this, that the said labels on the packages containing the insecticide bore the words and statements, to wit, "Good's Caustic Potash Tobacco Fish Oil Soap," and "Guaranteed Analysis: Fish Oil, 50 per ct.; * * * Tobacco Extract 3 per ct.," and "This soap * * * has a large percentage of bone phosphate * * * and ammonia;" whereas, in fact and in truth, the said insecticide contained much less than 50 per cent fish oil, did not contain any tobacco or tobacco extract, and did not contain a large percentage of bone phosphate or ammonia. Misbranding of the article was alleged in that it was an insecticide, and the said labels on the packages containing the said insecticide bore statements which were false and misleading, and the insecticide was labeled and branded so as to deceive and mislead the purchaser thereof, in this, that the labels on the packages bore the words and statements, to wit, "Good's Caustic Potash Tobacco Fish Oil Soap No. 6 is recommended to Nurserymen, Florists, Gardeners and Others, for the destruction of insects and parasites of all kinds that infest Plants of any kind," and "Guaranteed Analysis: Fish Oil, 50 per ct. * * * Tobacco Extract 3 per ct.," and "This soap contains * * * a large percentage of bone phosphate * * * * and ammonia"; whereas, in fact and in truth, the said insecticide was not effective in destroying some insects infesting some plants, it contained much less than 50 per cent fish oil, it did not contain any tobacco extract, and it did not contain a large percentage of bone phosphate and ammonia. Misbranding of the article was alleged further in that it was an insecticide other than Paris green and lead arsenate, and that it consisted partially of an inert substance, to wit, water, which does not prevent, destroy, repel, or mitigate insects, and the name and the percentage amount of the said inert ingredient were not stated on the labels on the packages containing the insecticide, nor, in lieu of the name and percentage amount of the said inert ingredient, were the names and the percentage amounts of each and every ingredient of the insecticide having insecticidal properties and the total percentage of inert ingredients present in the insecticide stated plainly and correctly on the labels on the packages containing the insecticide.

The cause coming on for trial on March 16, 1914, the defendant, Roberta K. Good, entered a plea of guilty, and the court imposed a fine of $100.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

101. Adulteration and misbranding of "Nikoteen Aphis Punk." U. S. v. Six Cases of Nikoteen Aphis Punk. Decree of condemnation by default. Goods ordered sold or destroyed. (I. & F. No. 208. Dom. No. 8391. S. No. 11.)

On November 22, 1913, the United States attorney for the District of Maryland, acting upon the report of the Secretary of Agriculture, filed a libel in the District Court of the United States for said district praying seizure and condemnation of six cases containing packages of an article called "Nikoteen Aphis Punk," found in possession of J. Bolgiano & Son, Baltimore, Md. Each of the packages of the article was labeled as follows: "Nikoteen Aphis Punk for Destroying Insect Life on Plants and Flowers. Price 60 Cents. Prepared by Nicotine Mfg. Co. St. Louis, Mo. Keep Lid on when not in use. Active Ingredient Nicotine 40% Inert Ingredient 60% * * * Aphis Punk * * * It is also effective in killing caterpillars on shade and fruit trees."

Analysis and examination of a specimen of the article showed that it consisted of nicotine in a proportion less than 40 per cent and of inert ingredients in a proportion greater than 60 per cent, and that it would not destroy all insect life on plants and flowers and was not effective in killing caterpillars on shade and fruit trees. It was alleged in the libel that the said six cases of "Nikoteen Aphis Punk" had been transported from the State of Missouri into the State of Maryland and remained unsold in original unbroken packages on the premises of J. Bolgiano & Son, at Baltimore, Md. The libel alleged further that the said article was adulterated in violation of section 7 of the Insecticide Act of 1910 in that it was an insecticide other than Paris green and lead arsenate, and its strength and purity fell below the professed standard or quality under which it was sold, in this, that the label bore the statement, "Active Ingredient Nicotine 40% Inert Ingredient 60%," whereas the insecticide contained less than 40 per cent nicotine and more than 60 per cent inert ingredients. Misbranding of the article was alleged within the meaning of section 8 of the Insecticide Act of 1910 in that it was an insecticide, and the package or label bore statements regarding the article and the ingredients or substances contained therein which were false and misleading, and it was labeled or branded so as to deceive or mislead the purchaser thereof, in this, that the label bore the statements, "Active Ingredient Nicotine 40% Inert Ingredient 60% * * * Nikoteen Aphis Punk for Destroying Insect Life on Plants and Flowers. * * * It is also effective in killing caterpillars on shade and fruit trees," whereas the insecticide contained less than 40 per cent nicotine and more than 60 per cent inert ingredients, it would not destroy all insect life on plants and flowers, and it was not effective in killing caterpillars on shade and fruit trees.

The cause coming on for hearing on March 18, 1914, no one having appeared to show cause why a final decree of condemnation should not be passed, a decree was entered adjudging the said goods condemned and forfeited to the United States, and ordering the sale thereof after removing the deceptive branding, or the destruction thereof.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

102. Misbranding of "Sanax Disinfecting Fluid." U. S. v. Sharp & Dohme. Plea of nolo contendere. Fine, 50 cents. (I. & F. No. 19. Dom. No. 255.)

On July 19, 1913, the United States attorney for the District of Maryland, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States against Sharp & Dohme, Baltimore, Md., a corporation, alleging the shipment, on April 7, 1911, from Baltimore, in the State of Maryland, to Augusta, in the State of Georgia, of a quantity of an article called "Sanax Disinfecting Fluid" which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in a package labeled "Sanax Disinfecting Fluid," and the label bore the statement, "Sanax has 5 times the germicidal efficiency of Pure Carbolic Acid Crystals as determined by the Rideal-Walker test."

Examination of a specimen of the article in the United States Department of Agriculture showed that the germicidal efficiency of the article was only 2.125 times as great as pure carbolic acid crystals by the Rideal-Walker test. Misbranding of the article was alleged in the information in that it was an insecticide, and that the statement on the label on the insecticide, to wit, "Sanax has 5 times the germicidal efficiency of Pure Carbolic Acid Crystals as determined by the Rideal-Walker test," was false and misleading, and the insecticide was labeled and branded so as to deceive and mislead the purchaser, in that the insecticide did not have five times the germicidal efficiency of pure carbolic acid crystals as determined by the Rideal-Walker test but that its efficiency as determined by that test was only 2.125 as great.

The cause coming on for trail before the court and a jury on March 11, 1914, the defendant, Sharp & Dohme, withdrew its plea of not gulity, previously entered, and offered in lieu thereof a plea of nolo contendere. The court (Rose, *J.*) made the following remarks:

Gentlemen of the Jury: This is a case in which an explanation of the actual situation of the law may be useful to you so that you may have some knowledge of the law if you have occasion to sit in any other cases of the kind during your term as jurymen.

This Insecticide Act is modeled upon the Food and Drug Act. I had occasion some time ago to analyze that act and my recollection is that about nineteen-twentieths or more of the Insecticide Act is a literal copy of the Food and Drug Act. Congress, when it passed those acts, did not intend to attempt the regulation of how manufacturers should carry on their business. Congress did not even attempt to say what a man should tell about his goods. It is true, there are some peculiar exceptions to that, some peculiar things in confectionery and drugs that are exceptions to that; for example, if you have in them morphine and some other ingredients, even to a slight extent, you must tell. So in the Insecticide Act there is a provision to the effect that you must tell either the precise kinds and quantity of your active constitutents or the precise character and quantity of your inoperative or inert constitutents. But those, as I say, are exceptions.

The general principle of these laws is the same through all of them. A manufacturer puts up what he chooses, so far as those laws are concerned. He tells about them as much or as little as he chooses. He need not say anything about them unless he so desires. As I say, there are a few exceptions. If he *does* say anything about them, he must, at his peril, be sure that what he says is not false or misleading in any respect. Congress passed a law which had in mind the utter impossibility, I should say, of enforcing a statute of this character, if it were necessary, before conviction could be secured, to bring home to any particular individual an intent to deceive. With a large corporation or a small one with a good many different employees putting out an article it would be, ninety-nine times in a hundred, utterly impossible to show who, if anybody, was responsible, or whether it was not simply the responsibility of somebody from whom they had bought the goods. So Congress passed a law which, in form, makes the man who sends out in interstate commerce misbranded or adulterated goods responsible.

In this case it is admitted that the officers of this corporation were as honest as anybody in this room, but the fact remains that if you send out the misbranded goods you commit the offense.

Now, Congress did not intend that there should be a hardship or that any great injustice should possibly be done to anybody. It made two different provisions to prevent real hardship; first, in ordinary cases the department sends a notice to the person in charge of the corporation or company putting out the questioned article, and that person comes down before some officials in Washington, an official board, and they tell him what they think he has done. There are a good many reasons for that. In the first place, the law says that if he has bought these goods from somebody else and is sending them out just as he bought them, he may protect himself by taking a written guaranty from the persons from whom he bought them that the goods are not misbranded or adulterated under any of these acts, and if he has such a written guaranty, and then is accused of having sent these goods out misbranded or adulterated he displays his written guaranty and that lets him out and puts the charge up to the party who gave him the guaranty. In a case like this, where the concern who sent out the goods themselves compounded them, the Government analyst may make a mistake like anybody else. The Government takes three samples and they usually keep one sample intact so that when the party charged with the offense comes before the board in Washington, if he thinks that the official analysis is wrong, one of the things that he can do, if he is so minded, is to ask for a sample of

the product and he can have that particular sample analyzed by his chemist or chemists, or as many as he chooses, in order that he may be prepared to say that the Government analysis was wrong. But what is the most important protection is this: For a first offense nothing much happens to a man anyhow. The maximum penalty is only a $200 fine and there is no imprisonment attached to it. The great advantage from the Government's standpoint in getting the first conviction is simply that it then lays the definite basis for a second prosecution if, after such first conviction, the accused party proceeds again to misbrand or adulterate in the same way. There is a definite record in court, there can not be any dispute about it, that there has been one offense, and then if he is indicted for a second offense the Government can deal with him with a much larger fine, or imprisonment in particular cases. So that the scheme of the law is pretty simple. If you have misbranded by accident any sort of goods and the goods are shipped in interstate commerce and it is detected, you are liable. Your good faith, your reputation, your strong sympathy with the purposes of the Pure Food Law, all are immaterial. You have simply misbranded the goods and you have committed the offense. Now the question whether there should be $200 fine imposed or a fine almost ridiculous in its smallness is left entirely to the judge, and there it is that the reputation of the parties and the good faith in which they have acted are to be taken into account.

In this particular case the Government has freely and openly stated in court that they do not think for one moment that Sharp & Dohme, or anybody connected with that firm has intended to deceive their customers in any way, nor do they believe, in any proper sense of the term, that there was anything like carelessness to an appreciable degree. What really happened was simply this: As I have said the Federal law does not require you to tell anything about your article, but there is a State law here which did happen to require that if you make insecticides in Maryland that the germicidal efficiency of such insecticides as compared with carbolic acid should be marked upon the container. I guess that Maryland law was passed a few months before the Federal law, or at least before the State Legislature of Maryland knew that there would be a Federal law. They were passed very nearly at the same time. There were insecticides which would not do harm even to the insects. The only injury that was done was to the man that bought them. The Legislature of Maryland wanted to prevent the sale of those things and it provided that the people who sold the insecticides should state on the label how strong or effective an insecticide it was in comparison with carbolic acid. Sharp & Dohme have for some time done a considerable business in this particular Sanax product. They had to comply, and were perfectly willing to comply with the State law, but they were up against a rather difficult proposition. It is very easy for the Legislature of Maryland to resolve that the manufacturer shall tell how many times more effective as a germicide his product is than carbolic acid, but it was not so easy for the manufacturer to find out how much stronger it is, as you gentlemen have seen by the testimony of the experts given in this case yesterday. Now, it is not quite so difficult a matter under the new methods. Even at the time the law was enacted it is probable that Dr. Walker would think that it was not a very difficult matter; that he could, with a very small percentage of error, tell the efficiency of a germicide. It is very possible that he is entirely right in so thinking. But there was not scattered around every State in the Union a number of men who had any occasion to give their attention to any such subject. We are sometimes prone, when we are filling any public office in this State, to say that there are men in Maryland that can do anything that can be done by anybody anywhere. I have heard that remarked. But it sometimes happens that even in Maryland people have not turned their attention to particular lines of study. So Dr. Dohme and the officers of Sharp & Dohme Manufacturing Co. proceeded to look up somebody who could find out for them how many times stronger than carbolic acid their Sanax was. They got a gentleman here who had studied bacteriology in various ways. I do not know how much he had studied it with reference to these particular questions. They thought that they had done all that was necessary. As a matter of fact, they assumed for some reason, naturally enough—but as it turns out the assumption was unfounded—that if you get the proportion of phenols in a product you may know by that just what is its germicidal strength as compared with carbolic acid. They got that idea into their heads, very naturally, and it turns out to be a mistaken idea. They assumed that a germicide that has seventeen per cent of phenols in it is five times as strong as carbolic acid where, we learn, it may be only two and one-half times as strong, or less. In that way the mistake was made. It was a perfectly honest mistake and therefore I think I should be doing an injustice to the defendants, in view of the honest and manly way in which they have acted in this case, if I imposed any fine except one which would show my own strong conviction that the offense was an absolutely unwitting one. And when I say I should show that, I do not mean to criticize the action of the Government officials in instituting the prosecution.

The Government officials are in an embarrassing situation. If this was the only case they had to deal with, they would have been censurable for putting a reputable concern to the expense and trouble of a prosecution of this kind. But it is not. They sit down at Washington, and Sharp & Dohme and Smith & Johnson and Thompkins & Perkins, of Seattle or Albuquerque, Medicine Lodge, or any other place, are all one to the Government. They can not make fish of one and flesh of the other. They can not give everybody one chance before they prosecute them, because if they did that there are people in the United States who would be ingenious enough to make a great deal of money before the Government would stop them, and then, when they were stopped in the manufacture, they would try another kind of misbranding and would make a great deal more money before they were caught again by the Government. The law is a very impersonal thing, and in that respect it is very unpleasant in some ways. It is no respecter of persons, or should not be, and it does at times act with machinelike cruelty and hardship. Sometimes it is the only possible way. If those gentlemen in Washington tried to discriminate between one concern and another, then after a while the law would be relaxed first on account of the defendants' reputation or their advocacy of the pure-food laws, and then perhaps because of soundness of their views for or against the tariff, the Mexican policy, or the income tax, and what not. The Washington officials have to act as a great big machine, dealing with each case just as they would with all the others.

We have had in this case a big fight. You gentlemen have taken a day and a half from your work. There are a lot of these gentlemen have come into court as witnesses. A good deal of money has been spent. I think everybody has done in the matter precisely what everybody ought to have done. The net result is that I impose a fine of 50 cents upon the defendant.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 6, 1914.*

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